

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 1120 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE A.N.DIVECHA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? Yes

2. To be referred to the Reporter or not? No

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3. Whether Their Lordships wish to see the fair copy of the judgement? No

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? No

5. Whether it is to be circulated to the Civil Judge? No

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STATE OF GUJARAT

Versus

KIRTIBHAI BABUBHAI SANGHVI

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Appearance:

Shri S.T.Mehta, Additional Public Prosecutor, for the Appellant - State.

Shri N.S.Desai, Advocate, for the Respondent.

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CORAM : MR.JUSTICE A.N.DIVECHA

Date of decision: 09/10/96

ORAL JUDGEMENT

Inadequacy of the sentence imposed on the accused

by the learned Judicial Magistrate (First Class) at Umargaon by his order passed on 24th July 1992 in Summons Case No.1030 of 1990 is sought to be made adequate by appropriate enhancement thereof by means of this appeal preferred by the prosecution agency under Section 377 of the Code of Criminal Procedure, 1973 (the Code for brief). By his impugned order, the learned trial Magistrate, after convicting the respondent - accused of the offence punishable under Section 92 read with Section 21 (1) (iv) (c) of the Factories Act, 1948 (the Act for brief) on his pleading guilty to the offence with which he was charged, sentenced him to fine of Rs.2000/- in default simple imprisonment for 30 days.

2. It is not necessary to set out in detail the facts giving rise to this appeal. It may be sufficient to note that one workman met with an accident at about 9.00 a.m. on 14th February 1990 in the factory in the name and style of Apsara Art Materials Private Limited of which the respondent - accused was its Director at the relevant time. Thereupon, the concerned Factory Inspector visited that factory on 31st March and 19th April 1990. He found absence of safety measures as provided in the aforesaid statutory provision. He therefore filed his complaint in the Court of the Judicial Magistrate (First Class) at Umargaon on 28th June 1990 charging the respondent herein with the offence punishable under Section 92 read with Section 21 (1) (iv) (c) of the Act. It came to be registered as Criminal Case No.1030 of 1990. The nature of the offence was explained to the respondent herein as the accused on 4th July 1991. He did not plead guilty to the charge. He was thereupon required to be tried. It however appears that the case came to be adjourned from time to time and the respondent - accused submitted one pursis on 24th July 1992 at Exh.13 on the record of the case and pleaded guilty to the offence with which he was charged. Thereupon, by his order passed on 24th July 1992 in Criminal Case No.1030 of 1990, the learned Judicial Magistrate (First Class) at Umargaon, after convicting the respondent - accused of the offence with which he was charged, sentenced him to fine of Rs.2000/- in default simple imprisonment for 30 days. That aggrieved the prosecution agency through the complainant. It has therefore invoked the appellate jurisdiction of this court under Section 377 of the Code for enhancement of the sentence.

3. Learned Advocate Shri Desai for the respondent has tendered in this court today one affidavit sworn by the respondent herein on 1st October 1996. Therein he

has clearly mentioned that his pleading guilty to the offence was in the nature of plea-bargaining. Acceptance of plea-bargaining has been deprecated by the superior courts from time to time. The latest ruling on the point is the one in the case of V.K.BHATT v. ARYODAYA GINNING MILLS LTD. reported in 1996 (1) Gujarat Law Herald at page 678. Since the order of conviction and sentence passed by the learned trial Magistrate under scrutiny in this appeal is based on the plea-bargaining, I think it will have to be quashed and set aside and the matter will have to be remanded to the learned trial Magistrate for restoration of the proceeding to file and for his proceeding according to law in the light of the aforesaid binding ruling of this court from the stage of pleading not guilty by the respondent - accused at trial. It is clarified that no fresh plea of the respondent accused need be recorded after restoration of the proceeding to file. If any fresh plea of guilt of the respondent - accused is required to be recorded, it has to be recorded in accordance with the aforesaid ruling of this court in the case of V.K.BHATT (supra).

4. In the result, the judgment and order of conviction and sentence passed by the learned Judicial Magistrate (First Class) at Umargaon on 24th July 1992 in Criminal Case No.1030 of 1990 is quashed and set aside. The matter is remanded to the learned trial Magistrate for restoration of the proceeding to file and for its fresh disposal according to law in the light of this judgment of mine. This appeal accordingly stands disposed of.

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